

OPINION NO. 96-021

Syllabus:

The provisions of 6 Ohio Admin. Code 3701-29-02(C) do not prohibit a property owner from maintaining a sewage disposal line over neighboring properties

pursuant to a recorded easement established for that purpose; however, maintenance of such a line is subject to the requirements of 6 Ohio Admin. Code 3701-29-02(G).

To: John H. Hanna, Henry County Prosecuting Attorney, Napoleon, Ohio
By: Betty D. Montgomery, Attorney General, April 10, 1996

I am in receipt of your letter asking whether a defined permanent easement for the purpose of maintaining a sewage disposal line is sufficient to meet the requirements of 6 Ohio Admin. Code 3701-29-02(C), which states: "Each household sewage disposal system shall serve one dwelling on an individual lot and shall be properly maintained and operated by the owner. All the sewage from the dwelling shall discharge into the system."

This question arises because your county health department interprets rule 3701-29-02(C) to require that a household sewage system be located entirely on the property of the homeowner. The topography and soil conditions in your county are such that it often is not possible to construct, on a single lot, a sewage disposal system that utilizes a leaching system as the means of disposing the sewage effluent. When a leaching system cannot be used, it is common to install an outlet tile as a disposal line to convey the sewage effluent to some acceptable point of discharge, such as a public ditch. In order to reach the point of discharge, it may be necessary for the disposal line to cross adjacent properties. If express easements exist for this purpose, the owner of the sewage disposal system is able to properly maintain the line. Accordingly, your health department wishes to know whether rule 3701-29-02(C) permits the discharge of a septic system through a sewage disposal line constructed on or through neighboring land parcels in situations where express easements have been created for that purpose.

It is my understanding that the Ohio Department of Health interprets rule 3701-29-02(C) to require each dwelling on an individual lot to have its own sewage disposal system. Stated alternatively, if there is more than one dwelling on a lot, the rule prohibits the dwellings from utilizing a single household sewage system. The Department of Health sees no requirement in division (C) that the disposal line for a sewage system be located entirely on the same property as the dwelling it serves. While the interpretation of the rule by your health department is understandable, the interpretation of the state department of health is also consistent with the language of the rule. To the extent that any ambiguity exists, an administrative agency's interpretation of its own rule is entitled to deference. *State v. Mulhorn*, 72 Ohio App. 3d 250, 594 N.E.2d 630 (Jackson County 1991); *see also McAuliffe v. Board of Pub. Employees Retirement Sys.*, 93 Ohio App. 3d 353, 360, 638 N.E.2d 617, 621 (Franklin County 1994).

Additional support for the state department's interpretation of division (C) is found by reading it in context with division (G) of the same rule. *See generally First Fed. Sav. and Loan Ass'n v. Evatt*, 143 Ohio St. 243, 249, 54 N.E.2d 795, 797 (1944) ("[i]t is axiomatic that all parts of a statute shall be construed together"). Rule 3701-29-02(G) states in pertinent part:

Off-lot disposal of sewage effluent shall not be permitted except where the installation of an on-lot disposal system is not possible, as specified in rules 3701-29-10(A), 3701-29-10(B), and 3701-29-11(B) of the Administrative Code and the following conditions are met:

(1) When off-lot disposal sewage effluent requires the crossing of adjacent properties to reach the point of discharge *a recorded easement* or the use of a legally established, publicly maintained drainage improvement *from the dwelling lot line to the point of discharge shall be required.* (Emphasis added.)

Each of the three rules cited in the above text pertains to the proper installation of leaching systems. Rule 3701-29-02(G) thus expressly recognizes that there are situations where it is impossible to install a functional leaching system as part of an on-lot household sewage disposal system and that off-lot disposal of the sewage effluent is then permissible. Division (G) not only permits, but *requires*, the existence of an easement in such situations, which are the focus of your concern. Rule 3701-29-02(C) cannot be construed as prohibiting off-lot disposal of sewage effluent under circumstances that are permitted in rule 3701-29-02(G). Of course, it is imperative that, in addition to the recorded easement, all the other conditions set out in rule 3701-29-02(G)(2)-(5) be met. *See, e.g., Kerber v. Surmitis*, Case No. 2338-M, 1994 Ohio App. Lexis 6125 (Medina County Dec. 30, 1994) (where easement over adjoining property was not adequate to support a sewage system which met the environmental and health standards of rule 3701-29-02(G), local health department could require construction of new on-lot system).

It is, therefore, my opinion and you are hereby advised, that 6 Ohio Admin. Code 3701-29-02(C) does not prohibit a property owner from maintaining a sewage disposal line over neighboring properties pursuant to a recorded easement established for that purpose; however, maintenance of such a line is subject to the requirements of 6 Ohio Admin. Code 3701-29-02(G).